

**Partnership for Kids:  
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**"Juvenile Court Law: What You NEED to Know"  
2005/2006 Legislative Update  
on Issues Concerning Children and Families**

Presenters: **Judge A. Ellen White, J.D.**, Campbell County Juvenile  
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&

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# 2005/2006 Legislative Update on Issues Concerning Children and Families

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## **2005/2006 Legislative Update on Issues Concerning Children and Families**

**Hon. A. Ellen White, Judge  
Lelia Baum Hopper, Supreme Court of Virginia**

### **I. Custody and Visitation**

**§ 20-124.2 amended. Parent convicted of certain crimes; custody and visitation.** Provides that a child's parent or legal guardian can petition the court to enjoin an offending parent from petitioning the court for custody and visitation for up to ten years if the offending parent is convicted of felony sexual assault or murder of a child of the parent, a child residing with the parent or the other parent of the child, if doing so is in the best interest of the child. The court must appoint a guardian ad litem for the child. (Chapter 665; HB 903) 06

**§ 16.1-274 amended. Filing time for child custody reports.** Requires that a child custody report prepared pursuant to § 16.1-273 be furnished to all attorneys representing parties in the matter 10 days prior to the hearing instead of 5 days. (Chapter 675; HB 1007) 06

### **II. Child Abuse/Neglect; Foster Care**

**§§ 16.1-281, 63.2-900, and 63.2-906 amended. Foster care plans and home studies.** Requires parent and child involvement in the development of foster care plans. If the parent or child is not so involved, the plan shall include a full description of the reasons therefor. The bill requires that a home study be completed prior to the approval of any family for placement of a child in foster care. The Board of Social Services is required to adopt regulations allowing for dual approval of homes as both foster and adoptive homes. (Chapter 653, HB 2744) 05

**§§ 63.2-901.1 and 63.2-1721 amended. Background checks for foster parents.** Authorizes a child-placing agency to approve as a foster parent an applicant with not more than one assault and battery conviction as set out in § 18.2-57 as long as the conviction did not involve abuse, neglect, moral turpitude, or a minor, and provided 10 years have elapsed since the conviction. A nearly identical provision is already in state law for adoptive parents. (Chapter 722, HB 2002) 05

**§§ 22.1-289 and 63.2-900 amended; 22.1-3.4 added. School enrollment of children placed in foster care.** Requires that whenever a student has been placed in foster care and the social services agency is unable to produce the required documents for enrollment, the student must be immediately enrolled and the person enrolling the student must provide a written statement that, to the best of his knowledge, sets forth the student's age, compliance with notice requirements regarding good standing in the previous school, and that the student is in good health and is free from communicable or contagious disease. The sending and receiving school divisions must cooperate in facilitating the enrollment of the foster child across jurisdictional lines and may agree to allow the child to continue to attend the school in which he was enrolled prior to the most recent foster care placement, upon the agreement of the placing social services agency that such attendance is in the best interest of the child.

If the student is allowed to continue to attend the previous school, the receiving school division will be accorded foster children education payments and may enter into financial arrangements with the sending school division. Local school divisions are required to expedite the transfer of the scholastic record of the student. Social Services agencies are required to notify, within 72 hours of placing a child in foster care placement, the principal of the school in which the student is to be enrolled and the superintendent of the relevant school division or his designee and to inform the principal of the status of the parental rights. The bill clarifies that no foster child can be charged tuition.

However, the provisions relating to immediate enrollment and across jurisdictional placements will only apply to children who are subjects of foster care placements through entrustments or commitments to the local social services board or licensed child-placing agency and will not apply to children whose parents have an agreement with the local board or public agency through the community policy and management team where legal custody remains with the parents. The second enactment clause requires the Superintendent of Public Instruction and the Commissioner of the Department of Social Services to issue a memorandum as soon as practicable after the enactment of this bill to inform local school division superintendents and local social services agencies of its provisions. (Chapter 343, SB 1006) 05

**§§ 16.1-228 and 63.2-100 amended. Child abuse and neglect; sex offenders; penalties.** Provides that it is child abuse or neglect when a child is knowingly left alone in the same dwelling with a person to whom the child is not related by blood or marriage and who the parent knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender, under circumstances that create a substantial risk of physical or mental injury. (Chapter 868; HB 1066) 06

**§§ 18.2-371, 18.2-371.1 and 40.1-103 amended. Protection of infants.** Adds a requirement that a baby that is delivered to a qualifying hospital or rescue squad in order for the parent to have an affirmative defense to prosecution for abuse or neglect the child must be delivered *in a manner that is reasonably calculated to ensure the child's safety*. The 2003 "safe haven" legislation provided that when a parent voluntarily delivers a child no older than 14 days to a hospital or rescue squad, the parent will have an affirmative defense to prosecution for abuse or neglect, if the abuse or neglect prosecution is based solely upon having left the baby at such facility. (Chapter 935; SB 22) 06

**§ 63.2-900 amended and § 63.2-900.1 added. Kinship Foster Care.** Requires a local board of social services, before making a foster care placement, to first seek out kinship foster care. The Board of Social Services shall adopt regulations for determining whether the child has a relative who is eligible to become a kinship foster parent. Kinship foster care placements are subject to the requirements, and receive the benefits, of other foster care placements, including payments for the care of the child. (Chapter 360; SB 48) 06

**§ 63.2-901.1 amended. Foster care; criminal background checks.** Requires a nationwide, rather than statewide, criminal background check for any individual with whom the local board or agency is considering placing a child on an emergency, temporary, or permanent basis, including the birth parent of a child in foster care placement. In emergency circumstances, a statewide Virginia Criminal Information Network search may still be performed to satisfy the background check requirement, provided that a national search is also performed afterwards. The child shall be removed from the home immediately if any adult resident, within three days of the child's placement, fails to provide fingerprints and written permission to perform a national criminal history record check when requested. (Chapter 558; HB 1317) 06

**§ 22.1-3.2 amended. Registration of new student.** Requires a parent, guardian, or other person having control or charge of a child of school age to provide to a public school, upon registration of a student, information concerning certain criminal convictions or delinquency adjudications. When the registration results from foster care placement, the information shall be furnished by the local social services agency or licensed child-placing agency that made the foster care placement. (Chapter 53; HB 95 and Chapter 183; SB 656) 06

**§ 2.2-213.2 added. Secretary of Health and Human Resources; duties.** Requires the Secretary, in consultation with the Secretary of Public Safety, to establish an integrated system for coordinating the planning and provision of services for children with incarcerated parents among state, local, and nonprofit agencies, and faith-based organizations in order to provide such children with services needed to continue parental relationships with the incarcerated parent, where appropriate, and encourage healthy relationships in the family and community. This bill is a recommendation of the Joint Subcommittee Studying the Commonwealth's Program for Prisoner Reentry to Society. (Chapter 366; SB 188) 06

**§ 18.2-254.1 amended. Drug treatment courts.** Establishes a drug treatment court in the City of Newport News. (Chapter 341; HB 752 and Chapter 175; SB 367.) 06

### **III. Adoption**

**Multiple sections in Title 63.2 amended and added. Revisions to adoption laws.** Expands jurisdiction and venue choices for parties involved in adoption, reduces the review time of an adoption petition, and adds factors for the court to consider when determining whether or not to grant an adoption petition. Additionally, the bill sets out the procedure for "Close Relative Adoptions." The bill specifies that the consent of a birth parent is not required when that parent has neither visited nor contacted the child for a period of 6 months prior to the filing of a petition for adoption. Unmarried birth fathers may consent to the termination of all parental rights *prior*

to the birth of the child. The time periods for notice for birth fathers and their objection to pending terminations and adoptions and for the withdrawal by a birth parent of consent to adoption are shortened. The bill also makes several other administrative changes to the adoption laws. (Chapter 848; HB 727) 06

**§§ 16.1-277.01 and 17.1-275 amended, and multiple sections in Title 63.2 amended and added. Revisions to adoption laws; putative father registry.** Makes procedural and administrative changes to adoption laws, creates a "designated adoption", and establishes a putative father registry. The bill removes a provision that Virginia law applies to entrustment agreements executed in the Commonwealth by agencies outside the Commonwealth. Acknowledged, adjudicated, presumed and registered fathers whose identity is not reasonably ascertainable are entitled to notice of an adoption. Consent is not required of a birth father who denies paternity under oath and in writing or a birth parent who, without just cause, has neither visited nor contacted the child for six months. Unmarried birth fathers may consent to the termination of parental rights prior to the birth of the child. The amount of time to object to proceedings is decreased from 21 to 15 days after the notice is mailed. Failure to appear at a hearing waives the right to consent to the adoption.

The length of time during which an entrustment agreement can be revoked by the birth parents is reduced from until the child is 25 days old and 15 days have elapsed since execution to until the child is 10 days old and 7 days have elapsed. Current law requires that a child be 10 days old before consent to a parental placement adoption can be executed in juvenile court. This bill allows such consent on the third day of the child's life. Consent is revocable for 10 days instead of the current 15 and is not revocable at all after the child is 10 days old.

The bill creates a new form of adoption where a birth parent may designate adoptive parents but use an agency to complete the adoption; the exchange of certain identifying information is not required.

Effective July 1, 2007, a Putative Father Registry is established to be administered by the Department of Social Services. The Registry is funded by an additional \$50 filing fee paid at the time of filing a petition for adoption. Any man who has engaged in sexual intercourse with a woman is deemed to be on legal notice that a child may be conceived. If a child is born of such a relationship and subsequently placed for adoption, in order to receive notice of the adoption, the man must register with the Putative Father Registry. Failure to register is deemed evidence that the identity of the father is not reasonably ascertainable. The Registry is contingent on the provision of funding by the 2006 budget bill.

Provisions related to adult and stepparent adoption are revised.(Chapter 825; SB 534) 06

This form is being revised to support implementation of Chapter 825:

DC-534 – ORDER FOR VOLUNTARY TERMINATION OF PARENTAL RIGHTS

**§ 63.2-1721 amended. Background checks; adoption.** Provides that a child-placing agency may approve as an adoptive or foster parent a person who was convicted of felony drug possession, provided that 10 years have elapsed since conviction, and the Governor has restored his civil rights. (Chapter 885; HB 1534) 06

**§ 63.2-1205.1 added. Adoption; sexually violent offenders.** Prohibits sexually violent offenders and offenders who are required to register pursuant to § 9.1-902 from adopting a child. (Chapter 384; SB 691) 06

#### **IV. CHINS/Delinquency Matters**

**§§ 9.1-901, 9.1-902 and 9.1-903 amended. Judicial discretion to require registration of minor who commits an otherwise registrable offense.** Provides that a sex offender or child criminal offender over the age of 13 who is a juvenile tried as a juvenile and found delinquent of any registrable offense may be required to register after the court considers the following factors relevant to the case: (i) the age and maturity of the complaining witness, (ii) the age and maturity of the offender, (iii) the difference in the ages of the complaining witness and the offender, (iv) the nature of the relationship between the complaining witness and the offender, (v) the offender's prior criminal history, (vi) any other aggravating or mitigating factors relevant to the case, and (vii) whether the offense was committed with force, threat or intimidation. The section applies to offenses that occur on or after July 1, 2005. Current law does not require the registration of juveniles, unless they are tried and convicted as adults. (Chapter 586, HB 2318)05

**§§ 9.1-902, 9.1-905, 9.1-907 and 9.1-913 amended. Sex Offender and Crimes Against Minors Registry Act; registration; enforcement.** Amends the Sex Offender and Crimes Against Minors Registry Act to add murder of a child under 18 to the list of crimes for which registration and internet posting is required, and sexual battery against a child under 6 by a perpetrator 18 or older to those crimes classified as sexually violent offenses. The bill requires that a sex offender who must register in his home state register in Virginia when he moves here, regardless of whether the underlying criminal offense is similar to a Virginia offense. The bill also requires the registration of a nonresident in Virginia for an extended visit (30 days or more). Finally, the bill clarifies that local law-enforcement agencies have the authority to enforce the provisions of the Act. (Chapter 603, HB 2836) 05

**§ 18.2-67.3 amended. What constitutes aggravated sexual battery; penalty.** Provides that the crime of aggravated sexual battery, a felony punishable by up to 20 years in prison, is committed when a person sexually abuses a person of any age who is physically helpless. Currently, sexual abuse of a person who is physically helpless is only punishable as aggravated sexual battery if the victim is 13 or 14 years old, the victim is seriously injured, or the accused uses a dangerous weapon. Under current law, sexual abuse of any child under age 13 is aggravated sexual battery. (Chapter 406, HB 2247) 05

**§§ 22.1-208.01, 22.1-279.3:1 and 22.1-279.6 amended. School boards; policies on bullying.** Directs the Board of Education to include bullying in its standards for school board policies on student conduct and requires school boards to include (i) instruction on the inappropriateness of bullying in their character education programs and (ii) bullying provisions in their student conduct codes. In addition, the measure requires the reporting of incidents of stalking to principals and division superintendents. Finally, except as may be prohibited by federal law, regulation, or jurisprudence, principals must report certain violent acts, stalking, and other conduct to parents of the minor student who is the target of the conduct; included in this report is disclosure that the incident has been reported to law enforcement, and that the parent may



contact law enforcement for further information. (Chapter 461, HB 2266; Chapter 484, HB 2879) 05

**§ 18.2-10 amended. Elimination of capital punishment for minors; penalty.** Restricts the death penalty to those who are 18 years of age or older at the time of the capital offense. Currently, the age requirement to receive the death penalty is 16 years of age or older at the time of the offense. This change is being made in response to the case of *Roper v. Simmons*, 543 U.S. 551 (2005), decided March 1, 2005, in which the U.S. Supreme Court held that the Eighth and Fourteenth Amendments forbid the execution of offenders who were under the age of 18 at the time of the crime. (Chapter 36; HB 45 and Chapter 733; SB 362) 06

**§ 22.1-277.01 amended. Possession of certain weapons on school property; expulsion.** Requires a school board to expel from school for at least one year a student who possesses certain weapons on school property or at a school-sponsored activity. Current law relates to "bringing" weapons to school. (Chapter 703; HB 1516) 06

## **V. Domestic Violence**

**§ 63.2-1612 amended. Domestic violence and prevention services.** Requires the Department of Social Services to (i) support, strengthen, evaluate, and monitor community-based domestic violence programs funded by the Department and act as the administrator for state grant funds and the disbursal of federal funds, (ii) collaborate with the Statewide Domestic Violence Coalition in developing and implementing community-based programs to respond to and prevent domestic violence, (iii) establish minimum standards of training and provide educational programs to train workers in the fields of child and adult protective services in local departments and community-based domestic violence programs funded by the Department to identify domestic violence and provide effective referrals for appropriate services, (iv) work with the Statewide Domestic Violence Coalition to implement methods to preserve the confidentiality of all domestic violence services records (v) work collaboratively with the Statewide Domestic Violence Coalition to operate the Virginia Family Violence and Sexual Assault 24-hour toll-free hotline and the Statewide Domestic Violence Database (Vadata), and (vi) promote interagency collaboration and cooperation to facilitate the appropriate response to victims of domestic violence. (Chapter 638, HB 2433; Chapter 685, SB 1144) 05

**§§ 16.1-253.1 and 16.1-279.1 amended. Protective orders.** Provides that a respondent may be ordered to restore or may be enjoined from terminating a necessary utility service to the residence that the petitioner has been granted exclusive possession of. The respondent can also be ordered to pay deposits to connect or restore necessary utility services if the respondent was required to provide alternative housing for the petitioner. The bill also allows for any other relief necessary for the protection of the petitioner and family or household members of the petitioner. (Chapter 308; SB 120) 06

These forms are being revised to support implementation of Chapter 308:  
DC 611 – PETITION FOR PROTECTIVE ORDER – FAMILY ABUSE  
DC-627 – PRELIMINARY PROTECTIVE ORDER - FAMILY ABUSE  
DC-650 - PROTECTIVE ORDER - FAMILY ABUSE

## **VI. Crimes Against Children**

**§ 18.2-370 amended. Indecent liberties with children; penalties.** Raises the age of the victim, for the purposes of committing the crime of taking indecent liberties with children, from 13 to 14. (Chapter 762, SB 1170) 05

**§§ 18.2-67.3, 18.2-361, 18.2-370 and 18.2-370.1 amended. Sexual offenses against children by a parent or grandparent; penalty.** Provides that sexual abuse of a child age 13-17 by a parent, stepparent, grandparent or step-grandparent is *aggravated sexual battery*, which is punishable by a term of imprisonment of one to 20 years. The bill provides that for purposes of the *crimes against nature statute*, “parent” includes stepparent; “grandparent” includes step-grandparent; “child” includes step-child and “grandchild” includes step-grandchild. The bill raises the age of the victim, for the purposes of committing the crime of *taking indecent liberties* with children, from 13 to 14. The bill amends the statute on *taking indecent liberties* with a child by a person in custodial or supervisory relationship to state that it does not apply if the child is emancipated or if the perpetrator is legally married to the child. (Chapter 185, HB 2564) 05

**§§ 18.2-390 and 18.2-391 amended. Sale of violent or sexually explicit video games; penalty.** Specifies that the sale, rental, loan or commercial display of a sexually explicit video or computer game to a juvenile is a Class 1 misdemeanor. (Chapter 463; HB 1403) 06

**§§ 9.1-902 and 18.2-472.1 amended. Sex Offender Registry; penalties.** Adds first offense child pornography possession and burglary with the intent to commit certain felony sex offenses as new Registry offenses, if committed after July 1, 2006. Criminal homicide in conjunction with contributing to the delinquency of a child or child abuse is also added as a new Registry offense. The bill modifies the registration of a person convicted of murdering a child, so that registration will be required if the victim is under 15 years of age and if the minor victim is 15 or older and the murder is related to a registrable sex offense. The bill adds burglary with the intent to commit certain felony sex offenses to the list of offenses, if committed twice that are deemed sexually violent offenses. The bill places murder on an equal footing with sexually violent offenses for purposes of registration. Persons convicted of sex offenses in a foreign country will be required to register. The bill makes a second or subsequent conviction for failing to register as a sex offender a Class 6 felony and a second or subsequent conviction of failing to register as a violent sex offender a Class 5 felony. (Chapter 931; HB 1333) 06

**§§ 18.2-48, 18.2-61, 18.2-67.1, 18.2-67.2, and 19.2-303 amended and § 18.2-370.3 added. Sex crimes; penalties.** Requires a mandatory minimum term of confinement of 25 years for the following offenses where the offender is more than 3 years older than the victim and the crime is done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as an abduction, burglary, or aggravated malicious wounding: sexual intercourse with a child under 13 years of age, sodomy of a child under 13 years of age, and object sexual penetration of a child under 13 years of age. The bill also provides that for those offenses and for abduction with intent to defile and abduction of a child under 16 years of age for immoral purposes if the term of confinement is less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years and that the

suspended sentence shall be suspended (subject to revocation) for the remainder of the defendant's life. Where the conviction is for sexual intercourse, sodomy, or object sexual penetration involving a child under 13 years of age, any probationary period must include at least 3 years of active supervision under a post release supervision program operated by the Department of Corrections with a minimum of 3 years of electronic GPS (Global Positioning System) monitoring. In any case where a defendant is convicted of abduction, rape, carnal knowledge of a child between 13 and 15 years of age, sodomy, object sexual penetration, aggravated sexual battery, or indecent liberties, and some portion of the sentence is suspended, the period of suspension must be at least equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned and the defendant must be placed on probation for that period of suspension. The bill also provides that any person 3 years older than the victim convicted of rape, forcible sodomy or object penetration of a child under 13 in the commission of an abduction, burglary or aggravated malicious wounding is prohibited from working on the property of a school or day care center, subject to a Class 6 felony. (Chapter 853; HB 846) 06

**Multiple sections amended and added in Titles 2.2, 9.1, 16.1, 18.2, 19.2, 22.1, 23, 46.1, and 53.1. Sex Offender and Crimes Against Minors Registry; penalties.** Makes numerous changes to Registry provisions. First offense child pornography possession and burglary with the intent to commit certain felony sex offenses will be new Registry offenses if committed after July 1, 2006. Criminal homicide in conjunction with child abuse will be a registrable offense. The sex offender website will include persons convicted of all registrable sex offenses not just persons convicted of violent sex offenses as under current law. The bill modifies the registration of a person convicted of murdering a child; registration will be required if the victim is under 15 years of age and if the minor victim is 15 or older and the murder is related to a registrable offense. Persons convicted in a foreign country will be required to register. Offenders will have three days to register or reregister after an address change rather than 10 and have to reregister for any employment change. Sex offenders moving into the Commonwealth will have three days to register instead of 10, as will nonresident visitors, workers and college students who are subject to registration requirements.

The State Police, or the Department of Corrections if a person is under Department of Corrections control or on community supervision, will be required to physically verify or cause to be physically verified registration information within the first 30 days of the initial registration or change of address and semi-annually each year thereafter.

Persons who have to register for murder of a minor will be required to reregister every 90 days, the same as a violent sex offender. In addition, when a sex offender is convicted of failing to register, he will be required to reregister more frequently (violent sex offenders monthly instead of every 90 days and sex offenders 180 days instead of 12 months). The duration of registration for sex offenders who have been convicted of failing to register is extended as they will no longer be permitted to get off of the registry in 10 years from the date of registration, but instead the requirement will be 10 years from the date of their last conviction for failing to register. In addition, murder of a minor will require lifetime registration.

Sex offenders convicted of failing to register will no longer be permitted to petition for relief for three years from the date of registration, but can petition five years from the date of their last conviction for failure to register.

The bill makes a second or subsequent conviction for failing to register as a sex offender a Class 6 felony and requires GPS monitoring and makes a second or subsequent conviction of failing to register as a violent sex offender or murderer a Class 5 felony and requires mandatory GPS monitoring.

Procedures to be used by correctional institutions and juvenile facilities to obtain registration information from sex offenders under their custody are made more comprehensive, and faster timelines for transmission of information to the State Police are added. An offender will be required to submit to having a DNA sample taken (if not already taken) and to being photographed by a law-enforcement agency every two years.

Failure to register is added to the offenses for which conviction bars loitering within 100 feet of a school. Persons convicted of such offenses after July 1, 2006, will also be prohibited from loitering within 100 feet of a child day program. Persons convicted of certain sex offenses will be prohibited from working or volunteering on the grounds of a school or day care center and will be prohibited from residing within 500 feet of a school or day care center.

Local school boards are required to ensure that schools within the division are registered to receive electronic notice of sex offenders within that school division and to develop and implement policies to provide information to parents regarding registration of sex offenders and the availability of information on the Registry, and are required to develop protocols governing the release of children to persons who are not their parent. The Virginia Council for Private Education is required to provide the State Police with the location of and e-mail address for every accredited private school in the Commonwealth. Public and private two- and four-year institutions of higher education are required to electronically transmit information about applicants accepted for enrollment at each institution to the State Police for comparison with the Virginia Criminal Information Network and National Crime Information Center Convicted Sexual Offender Registry. The Department of Motor Vehicles is required to electronically transmit application information and change of address information for the same purpose. The bill makes it a Class 4 felony to provide false information to obtain a driver's license with the intent to use it as proof of residency for sex offender registration purposes.

The bill also exempts the provisions of the Registry from the Freedom of Information Act and the Government Data Collection and Dissemination Practice Act and the Virginia Information Technologies Agency. The Department of Criminal Justice Services is required to advise and initiate training standards for criminal justice agencies and state, local and regional employees who work with the Registry. (Chapter 857; HB 984) 06

**Multiple sections amended and added in Titles 2.2, 9.1, 16.1, 18.2, 19.2, 22.1, 23, 37.2, 46.2, 53.1, and 63.2.** Sex offenders; registration, civil commitment and mandatory minimums; penalties. Amends provisions related to the Sex Offender and Crimes Against Minors Registry and the civil commitment of sexually violent predators and increases penalties for certain sex crimes.

First offense child pornography possession and burglary with the intent to commit certain felony sex offenses will be new Registry offenses if committed after July 1, 2006. The bill adds a conviction for criminal homicide in conjunction with a violation for child abuse as a registrable offense. The sex offender website will include persons convicted of all registrable sex offenses, not just persons convicted of violent sex offenses as under current law. The bill modifies the registration of a person convicted of murdering a child; registration will be required if the victim is under 15 years of age and if the minor victim is 15 or older and the murder is related to a

registrable sexual offense. Persons convicted in a foreign country will be required to register. Offenders will have three days to register or reregister after an address change rather than 10 and have to reregister for any employment change. Sex offenders moving into the Commonwealth will have three days to register instead of 10, as will nonresident visitors, workers and college students who are subject to registration requirements.

The State Police, or the Department of Corrections if a person is under Department of Corrections control or on community supervision, will be required to physically verify or cause to be physically verified registration information within the first 30 days of the initial registration or change of address and semi-annually each year thereafter.

Persons who have to register for murder of a minor will be required to reregister every 90 days, the same as a violent sex offender. In addition, when a sex offender is convicted of failing to register, he will be required to reregister more frequently (violent sex offenders monthly instead of every 90 days and sex offenders 180 days instead of 12 months). The duration of registration for sex offenders who have been convicted of failing to register is extended as they will no longer be permitted to get off of the registry in 10 years from the date of registration, but instead the requirement will be 10 years from the date of their last conviction for failing to register. In addition, murder of a minor will require lifetime registration.

Sex offenders convicted of failing to register will no longer be permitted to petition for relief for three years from the date of registration, but can petition five years from the date of their last conviction for failure to register.

The bill makes a second or subsequent conviction for failing to register as a sex offender a Class 6 felony and requires GPS monitoring and makes a second or subsequent conviction of failing to register as a violent sex offender or murderer a Class 5 felony and requires mandatory GPS monitoring.

Procedures to be used by correctional institutions and juvenile facilities to obtain registration information from sex offenders under their custody are made more comprehensive, and faster timelines for transmission of information to the State Police are added. An offender will be required to be photographed every two years and to submit to having a DNA sample taken (if not already taken).

Additional entities will be entitled to automatic notification of registration of sex offenders, including nursing homes and institutions of higher education.

Failure to register is added to the offenses for which conviction bars loitering within 100 feet of a school. Persons convicted of such offenses after July 1, 2006, will also be prohibited from loitering within 100 feet of a child day program. Persons convicted of certain sex offenses will be prohibited from working or volunteering on the grounds of a school or day care center and will be prohibited from residing within 500 feet of a school or day care center.

Local school boards are required to ensure that schools within the division are registered to receive electronic notice of sex offenders within that school division and to develop and implement policies to provide information to parents regarding registration of sex offenders and the availability of information on the Registry. Local school boards must also develop protocols governing the release of children to persons who are not their parent. The Virginia Council for Private Education must annually provide the State Police with the location and e-mail address, if available, of every accredited private school in the Commonwealth for purposes of registering to receive electronic notification of sex offenders near the schools. Public and private two- and four-year institutions of higher education are required to electronically transmit information about applicants who have been accepted for admission at each institution to the State Police for

comparison with the Virginia Criminal Information Network and National Crime Information Center Convicted Sexual Offender Registry. The Department of Motor Vehicles is required to electronically transmit application information and change of address information for the same purpose. The bill makes it a Class 4 felony to provide false information to obtain a driver's license with the intent to use it as proof of residency for sex offender registration purposes.

The bill also exempts the provisions of the Registry from the Freedom of Information Act and the Government Data Collection and Dissemination Practice Act and the Virginia Information Technologies Agency. The Department of Criminal Justice Services is required to advise criminal justice agencies regarding Registry requirements.

The bill also requires a mandatory minimum term of confinement of 25 years for the following offenses committed in the course of an abduction, burglary or aggravated malicious wounding where the offender is more than three years older than the victim: sexual intercourse with a child under 13 years of age, sodomy of a child under 13 years of age, and object sexual penetration of a child under 13 years of age. The bill also provides that for those offenses and for abduction with intent to defile and abduction of a child under 16 years of age for immoral purposes if the term of confinement is less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years and that the suspended sentence shall be suspended (subject to revocation) for the remainder of the defendant's life. Where the conviction is for sexual intercourse, sodomy, or object sexual penetration involving a child under 13 years of age by an offender more than three years older than the victim, any probationary period must include at least three years of active supervision under a post release supervision program operated by the Department of Corrections with a minimum of three years of electronic GPS (Global Positioning System) monitoring. In any case where a defendant is convicted of abduction, rape, carnal knowledge of a child between 13 and 15 years of age, sodomy, object sexual penetration, aggravated sexual battery, or indecent liberties, and some portion of the sentence is suspended, the period of suspension must be at least equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned and the defendant must be placed on probation for that period of suspension.

The bill adds to the list of offenses that qualify as sexually violent offenses for the purposes of civil commitment: abduction with intent to defile, abduction of a child under 16 years of age for the purpose of prostitution, carnal knowledge of a child between 13 and 15 years of age, and carnal knowledge of minors in custody of the court or state. The requirement that the complaining witness be under 13 years of age for aggravated sexual battery to qualify is removed. A felony conviction for conspiracy to commit or attempt to commit any of the qualified offenses is added as a qualifying offense. Incompetent defendants will be reviewed by the Commitment Review Committee. The bill provides that the Static-99 will be used to identify prisoners who will be forwarded to the Commitment Review Committee (CRC) for assessment and that if the Director of the Department of Corrections and the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services agree that no specific scientifically validated instrument exists to measure the risk assessment of a prisoner, the prisoner may be evaluated by a psychiatrist or psychologist to determine if he should be forwarded to the CRC. The bill provides factors for a court to consider in deciding whether to release a person on conditional release, such as living arrangements, availability of supervision, and access to treatment. A person on conditional release will be subject to mandatory GPS monitoring. The bill

also adds abduction with intent to extort money or for immoral purposes to the felonies for which a presentence report is required.

Portions of the bill have delayed effective dates. (Chapter 914; SB 559) 06

## **VII. Services**

**§§ 32.1-325.03 and 63.2-503.1 amended. Eligibility of aliens for state and local public benefits.** Provides that no person who is either not a U.S. citizen or legally present in the United States is eligible for any state or local public benefits. The bill defines state and local public benefits, and sets forth a series of exceptions to this eligibility rule. The bill also requires applicants for state or local assistance to provide proof of being in the United States legally and establishes a process for temporary receipt of benefits when applicants cannot provide such proof. This legislation is effective January 1, 2006. (Chapter 876, HB 1798; Chapter 867, SB 1143) 05

## **VIII. Of Interest**

**Study; Comprehensive Services for At-Risk Youth and Families; report.** Establishes a joint subcommittee to study the cost effectiveness of the Comprehensive Services for At-Risk Youth and Families program and to collaborate with the Joint Legislative and Audit Review Commission (JLARC) regarding its evaluation of the administration of the Act. The study shall be conducted in two phases. In the first phase of the study, the joint subcommittee shall review the administration of the CSA by state and local governments, including projections of caseloads, service needs and costs, quality of services provided, and make recommendations for improvement of program services and strategies for cost containment. The Commission shall, among other things, (i) evaluate the costs, quality, and reimbursement of children's residential services, (ii) examine interdepartmental regulations of these facilities, (iii) determine whether CSA children receive appropriate care, and (iv) apprise the joint subcommittee of the status of its study and findings.

In the second phase of the study, the joint subcommittee and Commission shall continue their respective studies and collaboration and report their final findings and recommendations to the Governor and the 2008 Session of the General Assembly. (SJR 96 – Adopted) 06

**Study; Joint Legislative Audit and Review Commission to evaluate the administration of the Comprehensive Services Act; report.** Directs the Joint Legislative Audit and Review Commission to evaluate the administration of the Comprehensive Services Act. In conducting this two-year study, the Commission shall, among other things, (i) evaluate the costs, quality, and reimbursement of children's residential services; (ii) examine the interdepartmental regulation of these facilities; (iii) assess the administration of the CSA by state and local governments; (iv) evaluate the quality and capacity of services available to and provided for CSA children; and (v) determine whether CSA children receive appropriate care, case management, education, and supervision. In each year of the study, JLARC will brief the Joint Subcommittee to Study the Cost Effectiveness of the Comprehensive Services for At-Risk Youth and Families Program established pursuant to SJR 96 (2006), and the chairmen of the House and Senate money and health committees. This study is a recommendation of the Joint Subcommittee

Studying Private Youth and Single Family Group Homes in the Commonwealth pursuant to HJR 685 (2005). (HJR 60 – Adopted) 06